

FILED

SEP 12 2005


Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

LANCE G. OWEN,

CIV 05-1037

Petitioner,

OPINION AND ORDER

-vs-

STATE OF SOUTH DAKOTA,

Respondent.

Petitioner is incarcerated in the Roberts County Jail in Sisseton, South Dakota, pending state court charges of murder in the first degree, murder in the second degree, manslaughter in the first degree, and aggravated assault. He has filed a motion for a writ of habeas corpus contending that the state courts have no jurisdiction to charge him for offenses which occurred in a Bureau of Indian Affairs housing unit in Peever, South Dakota. He seeks to be writted out of state custody and into Tribal custody.

Petitioner is not in custody pursuant to a state court judgment and therefore this court has no jurisdiction to enter habeas relief pursuant to 28 U.S.C. § 2254. It has long been the rule that federal courts should abstain from interfering in ongoing state criminal proceedings. Younger v. Harris, 401 U.S. 37, 43-45, 91 S.Ct. 746, 750-51, 27 L.Ed.2d 669 (1971). Habeas relief pursuant to 28 U.S.C. § 2241 is therefore not appropriate. Accordingly,

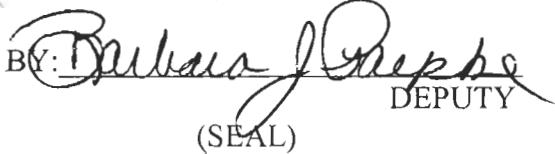
IT IS ORDERED that the petition for a writ of habeas corpus is denied.

Dated this 12th day of September, 2005.

BY THE COURT:


CHARLES B. KORNMANN
United States District Judge

ATTEST:
JOSEPH HAAS, CLERK

BY: 
Barbara J. Repke
DEPUTY
(SEAL)

103-014